

June 5, 2001

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

850 Union Bank of California Building  
900 Fourth Avenue  
Seattle, Washington 98164  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**CONSOLIDATED REPORT AND DECISION:**

- A. SEPA THRESHOLD DETERMINATION APPEAL**
- B. APPLICATION FOR PRELIMINARY PLAT**

**SUBJECT:** Department of Development and Environmental Services File No. **L99P3008**

**STONE RIDGE**  
Preliminary Plat Application

**Location:** On the west side of 148<sup>th</sup> Avenue Southeast, approximately between 148<sup>th</sup> Avenue Southeast and Ilwaco Avenue Northeast, and approximately between Northeast 16<sup>th</sup> Street and Northeast 18<sup>th</sup> Court, if both streets are extended

**Applicant:** KBS III, LLC *represented by*  
**David L. Halinen**, Attorney at Law  
2115 N 30<sup>th</sup> Street no. 203  
Tacoma, WA 98403  
Telephone: (206) 443-4684  
Facsimile: (253) 272-9876

**Appellants:** **Michael and Claudia Donnelly**  
10415 – 147<sup>th</sup> Avenue SE  
Renton, WA 98059

**King County:** Department of Development and Environmental Services,  
Land Use Division, *represented by*  
**Lanny Henoeh**  
900 Oakesdale Avenue SW  
Renton, WA 98055-1219  
Telephone: (206) 296-7168  
Facsimile: (206) 296-6613

**SUMMARY OF DECISION:**

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions, modified
Examiner's Decision:	Approve, subject to conditions, modified

## PRELIMINARY MATTERS:

Complete application date: September 2, 1999

## EXAMINER PROCEEDINGS:

Hearing Opened: March 15, 2001

Hearing Closed: May 8, 2001

## ISSUES/TOPICS ADDRESSED:

- Drainage
- Traffic
- Flooding
- Erosion
- ESA
- Recreational Area

## SUMMARY:

- A. Denies SEPA threshold determination appeal regarding drainage and traffic.
- B. Approves a subdivision of 49 single family residential lots within a 12.75 acre parcel classified R-4.

## FINDINGS:

1. **Proposal.** KBS III, LLC (the “applicant”), represented by David Halinen, proposes to subdivide a 12.75 acre parcel into 49 single family residential building lots. With lot sizes ranging from 3,886 to 7,399 square feet, the proposed development density will be 3.88 dwelling units per acre, consistent with the R-4 classification of the subject property.

The preliminary report to the Hearing examiner dated February 16, 2001, issued by the Department of Development and Environmental Services (“DDES” or “the Department”) contains as “Attachment 1” the applicant’s preliminary plat drawing. The same preliminary plat drawing, dated October 9, 2000, is entered as Exhibit no 7.

2. **General Information:**

Owner/Developer:	KBS III, LLC Attn: Kolin B. Taylor 12505 Bel-Red Rd., #212 Bellevue, WA 98005 Phone: 206-623-7000
Engineer:	Dan Balmelli, P.E. BP Land Investments, LLC P. O. Box 8205 Kent, WA 98032 Phone: 253-852-7527

Surveyor:	Centre Pointe Surveying, Inc. 33639 – 9 <sup>th</sup> Ave. S. Federal Way, WA 98003 Phone: 253-661-1901
STR:	NE ¼ of the SE ¼ of Sec. 3, Township 23, Range 5
Location:	Lying on the west side of 148 <sup>th</sup> Ave. SE, approximately between 148 <sup>th</sup> Ave. SE and Ilwaco Ave. NE, and approximately between NE 16 <sup>th</sup> St. and NE 18 <sup>th</sup> Court if both streets were extended.
Zoning:	R-4
Acreage:	7.49
Number of Lots:	32
Density:	4.3 dwelling units per acre
Lot Size:	Ranges from 4,500 to 10,000 square feet in area
Proposed Use:	Single Family Residential
Sewage Disposal:	City of Kent
Water Supply:	City of Kent
Fire District:	Number 37
School District:	Kent School District
Complete Application Date:	September 30, 1999

3. **State Environmental Policy Act.** On November 3, 2000 DDES issued a mitigated threshold determination of non-significance (MDNS). That determination required the applicant to construct eastbound and westbound left turn lanes at the SR 900/148<sup>th</sup> Avenue SE intersection; to clear vegetation within the right of way along SR 900 to achieve maximum entering sight distance; to set aside a “Tract K” in order to protect a red-tailed hawk nest tree; and to perform other specified impact mitigating measures related to the red-tailed hawk nest location.

On November 27, 2000, Michael and Claudia Donnelly appealed the Department’s SEPA threshold determination. Pursuant to a pre-hearing conference conducted on December 19, 2000, the issues of that appeal were limited to impacts related to flooding of neighboring properties; impacts related to erosion, sedimentation, water quality and salmonid species protection; and impacts related to traffic safety at SR900/148<sup>th</sup> Avenue Southeast. Hearings on that appeal were consolidated with public hearings on the proposed plat which occurred on March 15, 2001, March 22, 2001, April 2, 2001 and April 3, 2001. Thereafter, the parties agreed to a briefing schedule which concluded May 8, 2001. The parties waived those KCC.20.24.098 time limits for appeal review to the extent necessary to complete the schedule described here.

In its report and recommendation (Exhibit no. 2), the Department consolidated its preliminary plat recommendation with its analysis and response to the appeal. In that report, the Department made some revisions to its original November 3, 2001 MDNS, most notably by specifying a seasonal construction period for the east/west left turn lanes on SR 900 and a new condition requiring the applicant to install or to collaborate with other developers to install a traffic signal at the SR 900/148<sup>th</sup> Avenue Southeast intersection period, together with “an appropriate financial guarantee to be posted prior to engineer plan approval.”

The applicant opposes that portion of the revised SEPA threshold determination, concerning the traffic signal requirement at the SR900/148<sup>th</sup> Avenue Southeast intersection.

4. **Department Plat Recommendation.** The Department recommends grating preliminary approval to the proposed plat of Stone Ridge, subject to the twenty-eight (28) conditions of final plat approval stated on pages 15-22 of the Department's preliminary report (Exhibit no. 2), with the following modification:
  - A. **Red-Tailed Hawk protection area.** Recommended condition no. 24 requires that Tract K, be set aside as undeveloped open space to remain in native growth unless it is documented by the property owner, to the satisfaction of King County, that the nest has been abandoned for at least five years. In its final recommendation, entered as Exhibit no. 35 in the hearing record, the Department indicates that the tract may be developed through the approval of a future plat application, short plat application or plat alternations when it has met that five year abandonment standard, but that *the number of lots created in Tract K shall be consistent with the zoning and overall permitted density for the entire plat of Stone Ridge.*
  - B. **Grading within designated erosion hazard areas.** In its final recommendation, the Department adds a new recommended condition no. 29 which would require all grading work on designated erosion hazard areas to be completed consistent with the seasonal restrictions appearing in KCC 16.82.150.D.
5. **Applicant response.** The applicant accepts the Department's final recommendation as described in finding no. 3, preceding, except for the following:
  - A. **Traffic Signal.** The applicant opposes the SEPA-based requirement to install a traffic signal at the SR 900/148<sup>th</sup> Avenue Southeast intersection.
  - B. **Tract I stub street.** As proposed by the applicant (Exhibit no. 7) Tract I—42 feet wide—connects proposed "Road B" (the central vehicular circulation spine within the proposed plat) to the south boundary of the subject property. Recommended condition 8.C requires that, "Tract I shall be dedicated as public road right of way and improved to urban sub-access street standard." The applicant opposes that recommendation.
  - C. **Recreation area.** Recommended condition no. 18 requires suitable on sight recreation space to be provided by the applicant including appropriate improvements. The amount of recreation space provided is recommended to equal or exceed 390 square feet per lot as required by KCC 21A.14.180.A. Note: Although the applicant raised concerns regarding this requirement at the outset of the hearing, the applicant expressed no objection at closing.
  - D. **Eastbound and westbound left turn lanes.** In the SEPA appeal review, the applicant objected to the language contained in SEPA-based recommended condition no. 22 which—at that time—made no mention of cost sharing with other development applicants in the area who would benefit from the required eastbound and westbound left turn lanes on SR 900 at its intersection with 148<sup>th</sup> Avenue Southeast. The applicant mentioned the proposed plat of Astor Park, in particular.

6. **Drainage/SEPA.** The SEPA Appellants and some neighboring property owners express concern regarding possible drainage impacts upon their downstream properties. “Greene’s Stream,” an ephemeral or seasonal stream, emanates from the subject property, then passes through or adjacent to the Donnelly, Keech and Hobbs properties. Though it sometimes may enter May Creek, it typically completely infiltrates before reaching May Creek. This infiltration answers a concern raised by SEPA Appellant Donnelly and some neighboring property owners regarding potential sedimentation impacts upon May Creek. Usually there are none.

In addition to downstream sedimentation concerns, however, the Appellants and neighboring property owners also express concern regarding downstream flooding and sedimentation from peak flow periods as well as a concern for erosion and downstream sedimentation. These concerns are based, at least in part, on observed results from past land clearing activity on the Wolfe property. It is important to note that this applicant, KBS, III, LLC, cannot be held responsible for past actions of Wolfe nor can it be held responsible for solving *existing* problems endured by downstream property owners. However, the county can certainly require the applicant to adhere to the highest standards available in regulatory code if circumstances warrant. In this case, DDES recommends precisely that—applying the highest, most vigorous, drainage controls and standards to this application. In so doing, DDES observes also that Greene’s Stream, as it crosses or abuts the properties of concern (Donnelly, Hobbs and Keech) was artificially rerouted from its original drainage course—an alteration that extends approximately 450 to 650 feet. There is no evidence that this alteration was achieved pursuant to proper permits. The alteration includes two 90° turns. The Department observes that, at present, the majority of flows in Greene’s Stream under non-storm conditions appear to follow the realigned channel.

The evidence of record strongly suggests that, during significant storm events, the (unpermitted) altered course of the stream bed and the reduced capacity of a 24 inch culvert at the northwest corner of the Hobbs property collaborate to cause backups along the stream bed, resulting in standing water upon the complainant properties.

The parties agree that none of the interior spaces of any buildings on the Donnelly, Hobbs or Keech properties have flooded in the past. Keech indicates that, while the driveway to his residence overtopped on one occasion, “sheet flow” of approximately ½ inch water depth is more typical. Some neighboring property owners resent the King County Surface Water Management Design Manual characterization of such flooding as “nuisance flooding”. Nonetheless, as indicated above, the highest Surface Water Management Drainage Manual standards are recommended. The Department concludes at page 13 of its preliminary report (Exhibit no. 2):

...[DDES] has concluded that the development of the subject plat will not exacerbate the flooding that the appellant and their neighbors have experienced with the application of level 3 flow control to storm water releases from the plat. Level 3 flow control is the most restrictive release rate contained in the drainage manual. It is designed to address a severe flooding situation. With its application to the proposed Stone Ridge subdivision, [DDES] expects there will not be an increase in either the depth of flood waters or the frequency of flooding after the development of the plat, as compared with prior to the development of the plat. Further, [DDES] believes that with the application of appropriate release rates to future development in the Greene’s Stream sub-basin and the May Creek sub-basin, downstream flooding in these basins will not be significantly affected.

The rather extensive drainage controls are contained principally in condition nos. 7A through 7H on pages 14 and 15 of this Report and Decision. Although the record contains significant evidence and testimony regarding the extent of current conditions, it contains absolutely no evidence or expert testimony which would cast doubt on the adequacy of the rigorous drainage standards required by condition no. 7. Appellant Donnelly testified that her motivation in pursuing the drainage issue is based on fear that the condition nos. 7A through 7H may be inadequate.

However, as a result of hearing testimony, the Department also recommends condition no. 29 which requires all grading work within designated erosion hazard areas to be completed consistent with the seasonal restrictions established by KCC 16.82.150.D.

7. **Traffic/SEPA.** The proposed development received transportation concurrency certification on April 9, 1999. The developer will be assessed a traffic impact mitigation fee (MPS fee) and an administration fee for each of the proposed lots. That fee is based upon pending area improvements to county streets. The amount of the fee is determined at the time it is assessed (half upon final plat approval; the remaining half upon building permit issuance). The current fee amount is \$2,913.00 per lot.

Access to the proposed plat will be obtained from 148<sup>th</sup> Avenue Southeast, a 21 foot wide asphalt roadway with a 3 to 4 foot wide grass and gravel shoulder along its eastside and a 3 to 6 foot wide gravel shoulder along its west side. Traffic studies in evidence indicate that 148<sup>th</sup> Avenue Southeast will be fully capable of absorbing the additional 490 vehicle trips per day that will be generated by Stone Ridge. However, both the Department and the SEPA appellants have expressed concern regarding the adequacy of the SR 900/148<sup>th</sup> Avenue Southeast intersection nearby. The current intersection design does not meet the King County entering site distance (ESD) standard on both the north and south legs of the intersection. Nor does it meet the stopping sight distant (SSD) standard on the east leg of the intersection. To address the sight distance problems, the Department recommends vegetation clearing and construction of east and westbound left turn lanes.

The Department and the applicant disagree as to whether the level of service (LOS) for this intersection should be calculated as LOS "E" or LOS "F". This question arose through the appeal review of the SEPA threshold determination. Michael and Claudia Donnelly contested the adequacy of the initial threshold determination. Responding, KCDOT recalculated the LOS based upon 1997 Highway Capacity Manual methodology and software, thereby finding LOS "F". The applicant, using 1994 Highway Capacity Manual software, found LOS "E". The Department's calculation resulted in a SEPA-based requirement, supported by WSDOT, to install a traffic signal at the SR 900/148<sup>th</sup> Avenue Southeast intersection—a requirement which the applicant opposes.

The following additional findings are relevant:

- A. In its report to the Hearing Examiner (Exhibit #2) the Department states:

With regard to level of service ("LOS"), Transpo's traffic analysis concluded that the LOS at the intersection, following the development of the subject plat, will be at LOS "E". This analysis was based on traffic modeling which utilized computer software that was the best available software at the time the analysis was completed. Thus, it was accepted by King County at the time Transpo's traffic analysis was submitted to

the County for review. More recently, subsequent to the publication of the SEPA determination for this project, an update of the software was issued.

The application of the updated software yields a conclusion that the intersection of SR 900/148<sup>th</sup> Avenue Southeast will operate at LOS “F” rather than “E”, when the development of the subject plat is expected to be completed. As a result, additional improvements to the intersection will be needed beyond the clearing of vegetation necessary to achieve stopping site distance, in order to bring the LOS to “E” or better as mandated by KCC 14.80

Recent discussions have occurred between WSDOT and KCDOT concerning the nature of the improvements which should be made to the intersection to achieve an improved level of service. WSDOT has verbally indicated (and in e-mail correspondence) that the installation of a traffic signal is the appropriate method to address the substandard level of service. Thus, this has been recommended by [DDES]/KCDOT, in addition to the construction of eastbound and westbound left turn lanes and the vegetation clearing to achieve stopping site distance.

WSDOT prepared and submitted for evidence a formal letter agreeing with this position (exhibit nos. 22 and 50). In addition, WSDOT representatives testified in support of the intersection signalization requirement.

- B. The Transpo Group analysis of intersection LOS was based on computer software corresponding to the 1994 version of the Highway Capacity Manual (“HCM”) while the “update of the software” referred to by DDES in its staff report corresponds to the 1997 HCM. However, no change in intersection standards occurred.
- C. KCC 14.65 describes intersection standards (“IS”) as those standards by which King County will evaluate intersections affected by new development to assure safe and efficient operation and to assure that *improvements to mitigate the adverse impacts of such developments are completed in accordance with the State Environmental Policy Act*. KCC 14.65.010.C. In a code section title “Relationships Among Three Components Of The Integrated Transportation Program” KCC 14.65.020.C.2 describes IS calculations:

Intersection level of service shall be calculated according to the *most recent* Highway Capacity Manual or an alternative method approved by the Department of Transportation.

KCC 14.65.020 goes on to describe the relationship of the integrated transportation program (and necessarily, intersection calculations) to SEPA. KCC 14.65.020.G states, among other things, that “impacts on intersections will be mitigated through the provisions of KCC 14.80. It states further, among other things, that, “the provisions of this title [ie, KCC Title 14, “roads and bridges”] do not supersede or replace the provisions of the County SEPA authority as enacted in KCC 20.44.”

- D. KCC 14.80, “Intersection Standards”, states as its authority and purpose, in part, “this chapter is enacted pursuant to the *State Environmental Policy Act, KCC 20.44 and RCW 58.17* and the King County Charter as a home rule county, Article 11, Section 11 of the Washington State Constitution.” KCC 14.80.101.A. Further, the Intersection Standards chapter defines Highway Capacity Manual:

Highway Capacity Manual means special report 209 of the transportation research board of the National Research Council, *as currently amended*.

E. KCC 14.80.030 defines significant adverse impacts regarding intersection standards, a matter not disputed in this case. That is, the parties agree that if the roadway intersection that provides access to the proposed development will function at a level of service worse than “E” there will be a significant adverse impact which must be mitigated. KCC 14.80.030. Rather, the parties disagree as to the *method of calculation* of the impact upon the intersection at issue (SR 900/148<sup>th</sup> Avenue Southeast).

F. KCC 14.80.050 provides for interjurisdictional agreements. It states, in part:

The level of service standards used in such agreement shall be those of the County, the WSDOT, the local jurisdiction, or some combination of them as provided in the agreement. Such interlocal agreements, of course, must be approved by the King County Council.

G. King County Charter Section 850 (Delegation of Authority) states, in part:

The County Council shall not delegate its legislative power except to the extent that it delegates to a County officer the authority to promulgate regulations in accordance with adequate standards established by the County Council.

H. On February 20, 2001, the County Council amended KCC 14.65.020.C.2. That amendment did not change the text of the section which indicates that IS shall be calculated “according to the most recent Highway Capacity Manual or an alternative method approved by the Department of Transportation”.

I. King county Public Rule PUT 10-3-2 (PR), effective April 26, 1999 also states that the calculation of intersection capacity will be done according to the “the most recent edition of the Highway Capacity Manual (HCM), or by alternative methods approved by the director.” Further, Section 5.21 defines the HCM as “the latest version of the Highway Capacity Manual.” The “most recent edition”, “latest version,” and “current” HCM at the time the public rules was adopted in 1999 was the 1997 HCM.

8. **Department Report Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report, dated February 16, 2001, are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner’s report which are submitted to the King County Council.

8. **Standard of Review.** Section F of the Division’s preliminary report to the King County Hearing Examiner (exhibit no. 2) cites the scope and standard of review to be considered by the Examiner. The Division’s summary is correct and will be used here. In addition, the following review standards apply:

A. WAC 197-11-35(1), -330(1)©, and -660(1)(3). Each authorize the lead agency (in this case, the Environmental Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.



- B. RCW 4.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the Responsible Official shall be entitled to “substantial weight”. Having reviewed this “substantial weight” rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency “negative threshold determination” is whether the action is “clearly erroneous”. Consequently, the administrative decision should be modified or reversed if it is:

...clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislation authorizing the decision or order.

9. Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

#### SEPA CONCLUSIONS:

1. The appellant argues that the KCDOT director cannot prohibit the use of the 1994 HCM or, in this case, intersection impact calculating software associated with the 1994 HCM<sup>1</sup>. This argument overlooks the SEPA authority vested in DDES and KCDOT. The ultimate decision making authority regarding impact (and, necessarily, the method of determining impact) rests with the responsible official, not with the applicant. The applicant’s arguments are framed in such a manner as to suggest that the responsible official’s choice of impact calculation method is a regulatory matter rather than an analytical one. However, with respect to the choice of intersection impact calculation method, the applicant is not being regulated. The applicant has not been prohibited from using the 1994 HCM. In fact, the 1994 HCM (and its associated software) is the *only* impact calculation method used by the applicant in this hearing record. Those calculations and their results have not been prohibited or excluded from this review in any sense.

However, DDES/KCDOT have, in the exercise of their SEPA responsibility and authority, used the most recent impact calculation methodology to determine the impact of the proposed development of Stone Ridge upon the SR 900/148<sup>th</sup> Avenue Southeast intersection. WAC 197-11-340 (2)(F) requires the responsible official to reconsider the DNS based on timely comments (such as those of appellant Donnelly) and authorizes the responsible official to make appropriate changes to the threshold determination if warranted. Further, WAC 197-11-340(3)(A)(ii) *requires* the lead agency to withdraw a determination of non-significance if, “there is significant new information indicating, or on, a proposals probably significant adverse environmental impacts.” Recall that, as noted in the findings above, the Metropolitan King County Council in February, 2001, adopted the 1997 HCM and its corollary software. This King County Council action set the stage for review of the Donnelly SEPA threshold determination appeal review by providing “new information” for the Departments to take into consideration. Certainly, a threshold determination is not “vested” when an appeal has been filed and when new information (including the adoption of impact calculation method) becomes available.

2. The applicant argues that the intersection standards (and by implication the methodology used to calculate intersection impacts) have a “restraining or directing influence” on the proposed plat of Stone Ridge; and that, therefore, the vesting rule contained in RCW 58.17.033(1) must be applied. The applicant cites *Westside Business Park, LLC v. Pierce County*, 100 Wn. App. 599 at 607, in which the Division Two court determined that stormwater drainage ordinances are land

---

<sup>1</sup> Throughout this review it is useful to remember that it is only the method of calculating that is at issue. The Intersection Standard (IS) remains unchanged.

use control ordinance. The *Westside* decision cites *New Castle Investments v. City of LaCenter*, 98 Wn. App 224, 989 (1999), in which the court held that, “a land use control ordinance is an ordinance that exerts a “restraining or directing influence” over land use.

Reading *New Castle Investments* further, however, we find that—as the head note promises—“the definition of ‘land use control ordinances’ does not include transportation impact fees.” In *New Castle Investments* the issue was whether the term “land use control ordinances” as stated in RCW 58.17.033(1) could be used to describe a fee used to pay for City facilities, “such as traffic signals or a park,” that may be indirectly impacted by new development. The court found that :

Transportation impact fees do not exercise a restraining or directing influence over land use; they only increase the cost.

The Division Two court in *New Castle Investments* concluded further:

The cost of a development, which is the only aspect of development affected by Transportation, impact fees, is a large part of the developer’s decision making. Certainly it is to the developers advantage if the cost can be determined early in the process and with some degree of certainty. But it does not necessarily follow that the cost of development is the type of expectation the vested rights doctrine was intended to protect. ...The transportation impact fee does not limit the use of land, nor does it resemble a zoning law. Instead, a transportation impact fee merely affects the ultimate cost of the development. Thus, it is not the type of expectation that vests under the vested rights doctrine.

Thus, we see that the appellate court found such fees not to be vested under either statute or doctrine. How do we distinguish between the court’s decision in *Westside Business Park* and *New Castle Investments*? Easily. Stormwater management controls, such as were at issue in *Westside Business Park*, usually affect the use and distribution of land on any given parcel proposed for development. A stormwater retention/detention pond can consume a significant portion of the development property and restrain or influence the distribution of uses throughout the remainder portion of that property. In contrast, the traffic impact fee in *New Castle Investments* and in the instant case of Stone Ridge, have no restraining or directing influence over land use—as the court said. If we translate the “impact fee” to the actual hardware required as significant adverse impact mitigation pursuant to SEPA, the “traffic signal”, we still see that it is off-site and has no “restraining or directing influence over land use”—the criterion used by the court in both *New Castle Investment* and *Westside Business Park*.

3. The applicant argues, as a matter of statutory construction, that section 1.B.2 of Ordinance 12616 (codified as KCC 14.65.020.C.2) made the 1994 HCM the only directly code authorized methodology for intersection LOS analysis in King County. “In view of KCC Charter Section 850 and by virtue of the applicant’s Stone Ridge subdivision application being vested under Ordinance 12616,” the applicant argues “the 1994 HCM must be construed as a continuing, directly authorized methodology for intersection LOS calculations until amended by the County Council.”

The argument continues that to interpret KCC 14.65 and KCC 14.80 consistently with King County Charter Section 850, the Council cannot be presumed to have delegated any authority to the National Research Council or the Transportation Research Board to amend applicable regulation in King County in the absence of specific Council authorization. In making this argument, the applicant cautions that no request to set aside any portion of KCC 14.65 or KCC 14.80 is being made—a ruling which everyone agrees would exceed the authority and jurisdiction of the Examiner. However, the applicant believes that an interpretation of KCC 14.65 and KCC

14.80 *consistent with* King County Charter Section 850 would yield an Examiner's decision which affirms the applicant's arguments.

The applicant's arguments are directed toward KCC 14.65.020.C.2:  
IS calculations.

Intersection level of service shall be calculated according to the most recent Highway Capacity Manual or an alternative method approved by the Department of Transportation.

The applicant's arguments are rejected for several reasons, including not only those set forth in conclusions nos. 1 and 2, preceding, but also the following:

- There is no doubt regarding the Council's intention as to the meaning of "most recent Highway Capacity Manual. In KCC 14.80.020.A the Council defined Highway Capacity Manual as meaning "special report 209 of the Transportation Research Board of the National Research Council, *as currently amended*." To strain for the "consistency" sought by the applicant would mean to directly disregard this explicit direction and definition by the Metropolitan King County Council. It will be presumed lawful until shown otherwise.
- The language at issue in KCC 14.65.020.C.2 does not wholly delegate any authority or responsibility to the transportation Research Board or any other entity outside County government. It keeps the King County Director of Transportation in the driver's seat, so to speak, by authorizing the KCDOT director to use "an alternative method." In other words, if the "most recent" Highway Capacity Manual proves unacceptable, the decision to use an alternative method rests with the King county Department of Transportation, not the National Transportation Research Board. The authority to *choose* retained by the KCDOT director distinguishes the facts in this case from *Osborn v. Psychiatric Review Board*, 325 Or. 135, 934P2d 391 (1997), cited by the Applicant. No delegation has occurred, therefore, except to the KCDOT which clearly may make such decisions pursuant to King County Charter Section 850. That Charter section authorized the Director to "promulgate regulations in accordance to adequate standards established by the County Council." We note again that the intersection standard applicable to the SR 900/ 148<sup>th</sup> Avenue Southeast has not changed under any of the ordinances considered in this appeal review.

4. The applicant argues that the KCDOT has no authority to go beyond the standards adopted by Council ordinance when the KDCOT director adopts public rule. As indicated above, the KCDOT Director has not done that. This hearing record contains no evidence that the definition of Highway Capacity Manual as stated in KCC 14.80.020 has been exceeded by KCDOT. That definition requires KCDOT to use the Highway Capacity Manual "as currently amended." That is precisely what KCDOT has done in this case.
5. As noted in finding no. 8, above, the burden of proof falls on the Appellant in a threshold determination appeal. Considering the preponderance of the evidence, the Appellant has not successfully borne that burden in this case. Considering the above findings of fact regarding traffic and drainage, the entire hearing record, it must be concluded that the department's threshold determination in this matter is not clearly erroneous and therefore cannot be reversed.

6. The Donnelly appeal is comprised principally of documentation of past occurrences, speculation about the future, and questions. The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Department's determination.
7. In addition, the following conclusions apply:
  - a. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration on non-significance. Rather, the Appellant differs with the Department's assessment of impacts or the probability of potentially adverse impacts. Speculation or questions with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination.
  - b. Although the Appellant argues that the information on which the Department based its determination was insufficient, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous. The findings above, particularly regarding drainage conditions to be imposed to protect downstream property owners and the SR 900/148<sup>th</sup> Avenue Southeast intersection, properly address probable significant adverse impacts.
  - c. There is a substantial amount of information in the record regarding the various impacts which have been asserted by the Appellants Donnelly. The Department has not been unaware of these issues and has investigated (and reinvestigated) them, but has arrived at conclusions which differ from the Appellant's. The Department, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination of non-significance. The Department's judgement in this case must be given substantial weight.
  - d. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Department's decision is not clearly erroneous and is supported by the evidence.

#### PLAT CONCLUSIONS:

1. Any portion of any of the above findings that may be construed as a conclusion is incorporated here by this reference.
2. Other issues raised, principally by the applicant, such as recreation area standards and sub street tract improvement standards were not addressed as objectionable at the applicant's closing presentation.
3. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
4. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.

5. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
6. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

SEPA DECISION:

For the reasons indicated in condition nos. 1 through 7, above, the SEPA threshold determination appeals of both the Applicant and the Donnelly's are DENIED.

PLAT DECISION:

The proposed plat of Stone Ridge is GRANTED preliminary approval: *subject* to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services. Any changes to the plat design which are mandated by the conditions which follow shall also be permitted.
4. The applicant must obtain final approval from the King County Health Department. Existing septic tanks on the site must be properly abandoned prior to final Health Department approval.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
6. The applicant must obtain the approval of the King County Fire Protection Engineer, to demonstrate compliance with the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual must also be satisfied during engineering and final review.
  - A. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual (KCSWDM). DDES approval of the drainage and roadway plans is required prior to any construction.

- B. Current standard plan notes and ESC notes, as established by DDES Engineering Review shall be shown on the engineering plans.
- C. The following note shall be shown on the final recorded plat:
- “All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #\_\_\_\_\_ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file.”
- D. Core Requirement No. 1: Discharge at the Natural Location.
- The applicant has received approval for a requested diversion of surface water flows within the project, under Drainage Adjustment L00V0062. The conditions of approval of this drainage adjustment shall be satisfied during the design and review of the project engineering plans.
- E. Core Requirement No. 3: Runoff Control.
- To mitigate for downstream capacity issues, the applicant shall provide Level Three flow control, as outlined in the KCSWDM. The size of the proposed drainage tract may have to increase to accommodate the required detention storage volumes and water quality facilities. The stormwater facility shall be located in a separate tract and dedicated to King County, unless portions of the drainage tract are used for required recreation space in accordance with KCC 21A.14.180.
- As specified in Section 5.1.1 of the KCSWDM, roof drain storm water shall be infiltrated or dispersed within the lot area if the soil conditions are favorable. Infiltration of storm water for both lot areas and roadway improvements is recommended if determined to be feasible. A geotechnical report shall be provided to evaluate soil conditions, seasonal depth to groundwater, and other design requirements as outlined in the KCSWDM.
- F. Core Requirement No. 4: Conveyance Systems.
- As part of the applicant’s submittal for engineering plan review, upstream flows shall be analyzed to determine whether there is adequate conveyance capacity in the existing 18-inch CMP that crosses northwest under 148<sup>th</sup> Avenue SE into Tract C in the eastern portion of the site.
- G. Core Requirement No. 8: Water Quality.
- The project is required to meet the Basic water quality requirements of the 1998 KCSWDM.

H. Special Requirement No. 2: Floodplain Delineation.

Because a wetland and two streams are located on the property, a floodplain analysis shall be performed. The 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat.

8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements: .

- A. Road A shall be improved as an urban neighborhood collector between 148<sup>th</sup> Ave. SE and Road C, and as an urban subcollector west of Road C. The design of the subject plat shall be modified so that the lots in the plat will not take individual direct access from the neighborhood collector portion of Road A. This modification to the design may result in the relocation of the proposed alignment of Road A.
- B. Roads C and D, at a minimum, shall be designed to the urban, subaccess street standard.
- C. Tract I shall be dedicated as public road right-of-way and improved to the urban, subaccess street standard.
- D. One-Hundred-Forty-Eighth Avenue Southeast along the frontage of the site shall be improved to the urban collector arterial standard, including provision for a bicycle lane.
- E. Tracts M shall be improved as a private joint use driveway, and shall serve a maximum of two lots. Lots 40 and 41 shall have undivided ownership of the tract and be responsible for its maintenance. A note indicating the ownership of the tract and the parties which are responsible for its maintenance shall appear on the final plat and engineering plans. As specified in KCRS 3.01C, improvements to the tract shall include an 18-foot-wide paved surface and a minimum tract width of 20 feet. Drainage control shall include a curb or thickened edge on one side of the roadway.
- F. Tracts D, F, and L shall be designed and improved as private access tracts, and shall each serve no more than six lots. The lots served by each tract shall have undivided ownership of the tract, and be responsible for its maintenance. A note indicating the ownership of each tract and the parties responsible for each tract's maintenance shall appear on the final plat and engineering plans.  
  
Improvements shall conform to KCRS 2.03 for urban minor access roads, which includes a 22-foot-wide paved driving surface. The centerlines of Tracts D and F shall be aligned with the centerlines of Roads D and C, respectively. The minimum tract width shall be 26 feet with a maximum length of 150 feet.
- G. The width of Tract N may be reduced to 20 feet. No improvements to this tract are required.
- H. A temporary turnaround shall be provided at the terminus of Road A. If this turnaround is located off-site, easements shall be deeded to King County to allow for the temporary public use of the turnaround until Road A is extended further north as a public road.
- I. Street illumination shall be provided at the intersection of Road A with 148<sup>th</sup> Ave. SE, a collector arterial, in accordance with KCRS 5.03.

- J. One-Hundred-Forty-Eighth Avenue Southeast along the frontage of the site may require a design for a bus zone and turn outs. As specified in KCRS 2.16, the applicant's design engineer shall contact METRO and the Issaquah School District to determine if a bus zone is needed, and if so, the specific design requirements.
  - K. Modifications to the above road conditions may be considered by King County, pursuant to the variance procedures in KCRS 1.08.
- 9. Boundary Line Adjustment L00L0089 shall be completed and put into effect through the recording of deeds, prior to the approval of the engineering plans for the subject plat.
  - 10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
  - 11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
  - 12. Lots within this subdivision are subject to KCC 21A.43 and Ordinance 14009 which imposed impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
  - 13. There shall be no direct vehicular access to 148<sup>th</sup> Ave. SE from those lots in the subject plat which abut this street. There shall be no direct vehicular access to the portion of Road A east of Road C from the lots which abut this portion of this street. A note to this effect shall appear on the final plat and engineering plans.
  - 14. Twelve feet of additional right-of-way for 148<sup>th</sup> Ave. SE shall be dedicated along the east property line, allowing for 42 feet of right-of-way from centerline. is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
  - 15. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat.



The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. The proposed subdivision shall comply with the sensitive areas requirements as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
17. Preliminary plat review has identified the following issues which apply to this project. All other applicable requirements for sensitive areas shall also be addressed by the applicant.
  - A. Wetland B (in Tract B) shall have a 25-foot native growth buffer, as measured from the wetland edge. Wetland A (extending from the north boundary of the site to the north boundary of the Road A right-of-way) shall have a 50-foot native growth buffer, as measured from the wetland edge, to the extent such buffer falls within the subject property. These wetlands and their required buffers shall be placed in Sensitive Area Tract in the subject plat.
  - B. The streams crossing Tracts A and C shall have a 50-foot buffer measured from each side of the stream channel, to the extent such buffers fall within the subject plat. These buffers are not required where proposed road right-of-way in the subject plat crosses a stream channel.
  - C. A 15-foot building setback line (BSBL) shall be established on the final plat from the edge of the sensitive areas tracts. The BSBL shall be delineated on all affected lots and tracts.
  - D. Buffer averaging may be allowed, pursuant to KCC 21A.24.320 and 21A.24.360, provided the total amount of buffer area is not reduced and better resource protection is achieved, as determined by the King County Land Use Services Division (LUSD). If buffer averaging is proposed, a buffer averaging plan shall be submitted by the applicant for review and approval by LUSD. LUSD may require the submittal of a bond or other financial guarantee by the applicant to assure the installation and survival of required plantings for a five year period.
  - E. The stream and wetland crossing by Road A is permitted. This road crossing shall comply with the provisions of KCC 21A.24.330N and 21A.24.370G. The amount of wetland area

and stream affected by the road crossing shall be minimized to the extent feasible through the use of retaining structures, if determined appropriate by LUSD. A mitigation plan shall be submitted by the applicant for LUSD approval, to address impacts from the wetland/stream crossing. LUSD may require the submittal of a bond or other financial guarantee by the applicant to assure the installation and survival of required plantings for a five year period.

- F. The stormwater outfall facility for the stormwater ponds in Tract H shall not be placed in wetland or stream buffers, unless determined necessary by LUSD, pursuant to the provisions of KCC 21A.24.330H4.
  - G. The applicant shall delineate all erosion hazard areas on the site on the final engineering plans. (Erosion hazard areas are defined in KCC 21A.06.415.) The delineation of such areas shall be approved by an LUSD senior geologist. The requirements found in KCC 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing activities.
18. Suitable on-site recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court, children's play equipment, picnic tables, benches, etc.). The amount of recreation space provided shall equal or exceed 390 square feet per lot, as required by KCC 21A.14.180A.
- A. An overall conceptual recreation space plan shall be submitted for review and approval by LUSD, with the submittal of the engineering plans. The conceptual recreation plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the conceptual plan.
  - B. A detailed recreation space plan (i.e., landscape specifications, equipment specifications, etc.) consistent with the overall conceptual plan noted in Item "a" above, shall be submitted for review and approval by LUSD and King County Parks, prior to or concurrently with the submittal of the final plat documents.
  - C. A performance bond for recreation space improvements to assure their installation, and the survival of required plantings for a three year period, shall be posted prior to recording of the plat.
19. A homeowners' association or other workable organization shall be established to the satisfaction of LUSD which provides for the ownership and continued maintenance of the recreation and open space areas.
20. Street trees shall be included in the design of all road improvements within and adjacent to the subject plat. The street tree landscaping design shall comply with Section 5.03 of the KCRS and the following:
- A. Trees shall be planted at a rate of one tree for every 40 feet of frontage. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - B. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless LUSD determines that trees should not be located in the street right-of-way.

- C. If LUSD determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- D. The trees shall be owned and maintained by the abutting lot owners or the homeowners' association or other workable organization, unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
- E. The species of trees shall be approved by LUSD if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- F. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by LUSD prior to engineering plan approval.
- G. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if 148<sup>th</sup> Ave. SE is on a bus route. If 148<sup>th</sup> Ave. SE is a bus route, the street tree plan shall also be reviewed by Metro.
- H. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

- 21. Documentation shall be submitted from a licensed land surveyor to demonstrate that all required zoning setbacks are met for any existing residences or outbuildings that are retained on the site.

The following conditions have been established under SEPA authority as necessary to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval.

- 22. Eastbound and westbound left turn lanes shall be constructed by the applicant on SR 900, at the SR 900/148<sup>th</sup> Ave. SE intersection. The design for the intersection shall be approved by the Washington State Department of Transportation (WSDOT). At a minimum, the existing entering sight distance for the north and south legs of the intersection must be maintained. All construction work associated with turn lane construction shall be completed between April 1<sup>st</sup> and September 30<sup>th</sup>. This seasonal restriction shall appear on the final engineering plans.
- 23. The east leg of the SR 900/148<sup>th</sup> Ave. intersection shall be modified, as necessary, so that the stopping sight distance requirements of WSDOT are met on the east leg of the intersection. (Note that per the applicant's engineer, this can be achieved by the clearing of vegetation along SR 900.) In addition, the applicant shall clear vegetation within the right-of-way along SR 900, east of 148<sup>th</sup> Ave., to maximize the entering sight distance for the north and south legs of the intersection.

24. A tree containing a red-tailed hawk nest is located on a parcel adjoining the north boundary of the site. Tract K in the subject plat, as depicted on the preliminary plat map received 10/9/00 (Sheet 1 of 3), lies south of this nest tree. This tract shall be labeled as a native growth open space tract on the final plat and engineering plans. This tract shall remain as undeveloped open space unless it is documented by the property owner, to the satisfaction of King County, that the nest is no longer used by red-tailed hawks, i.e., abandoned for at least five years. If it is demonstrated that the nest has been abandoned, the tract may be developed through the approval of a future plat application, short plat application, or plat alteration application. If Tract K is subdivided, the number of lots created in this tract shall be consistent with the zoning and overall permitted density for the entire plat of Stone Ridge. A note implementing the preceding provisions shall appear on the final plat.
25. Except as provided below, outdoor construction activities on the subject property on any area lying within a radius of 650 feet from the nest shall be prohibited from February 1 through July  
  
31. For a specific development permit, this seasonal limitation may be waived by King County if it can be shown to the satisfaction of the County that the nest is not being used by hawks. Any waiver will last for one nesting season, and must be renewed for subsequent nesting seasons. For any season in which nesting activity occurs, the July 31 seasonal limitation termination date may be adjusted by the County, based on a determination that the hatchlings have already fledged and the period of disturbance risk has passed. Any waiver or shortening of the seasonal limitation shall conform with Condition 5 below. A note implementing the preceding requirements shall appear on the final plat and engineering plans.
26. For any nesting season in which the applicant proposes a waiver or shortening of the seasonal limitation as provided in Condition 4 above, a plan formulated by a qualified wildlife biologist shall be submitted to DDES no later than February 1, describing protocols for monitoring the nest for hawk use, and if nest usage is taking place, for identification whether eggs have been laid and hatched and when fledging has occurred. Any proposed shortening or waiver of the seasonal limitation shall be based on the monitoring data, and is subject to the approval of DDES. A note implementing the preceding requirements shall appear on the final plat and engineering plans.
27. A six-foot-high cedar fence shall be constructed on the south boundary of Tract K, adjacent to Lots 26 – 34 and Tracts H and N. The purpose of this fence is to limit access to Tract K by the adjoining residents, and to lessen impacts on nesting red-tailed hawks.
28. To mitigate the significant adverse impact the plat of StoneRidge has on the intersection of SR 900/148<sup>th</sup> Ave. SE, the applicant shall either individually, or in conjunction with other developments in the area, install a traffic signal. The signal design shall be reviewed and approved by WSDOT, and an appropriate financial guarantee shall be posted prior to engineering plan approval.
29. All grading work in designated erosion hazard areas on the site shall be completed consistent with the seasonal restrictions appearing in KCC 16.82.150D. (See Condition 17g above.) A note to this effect shall appear on the engineer plans.

ORDERED this 5<sup>th</sup> day of June, 2001.

---

R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 5<sup>th</sup> day of June, 2001, to the parties and interested persons of record:

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before June 19, 2001*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before June 26, 2001*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Court-house, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MARCH 15, 22, APRIL 2 AND APRIL 3, 2001 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99P3008 – STONE RIDGE:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Lanny Heno and Mark Bergam. Participating in the hearing and representing the Applicant was Attorney David Halinen. Participating in the hearing and representing the Appellants were Claudia and Michael Donnelly. Other participants in this hearing were Christine Hobbs, Kathy Torretta, Dr. Stephen Conroy, Aileen McManus, Robert Jones, Betty Filley, George Hayden, Jullianne Bruce, John Collins, Dan Balmelli, Chad Armour, Kevin Jones, Wayne Potter and Mark Bandy.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES/LUSD File No. L99P3008
- Exhibit No. 2 DDES/LUSD Staff Report, dated February 16, 2001
- Exhibit No. 3 SEPA Environmental Checklist, signed by the Applicant, August 30, 1999
- Exhibit No. 4 SEPA MDNS, published on November 3, 2000
- Exhibit No. 5 Letter from Michael & Claudia Donnelly, dated November 26, 2000, received November 27, 2000, appealing the SEPA Determination.
- Exhibit No. 6 Letter from Curtis Schuster, Affidavit of Posting concerning the Notice of Application, and two additional pages (4 sheets total), dated October 13, 1999
- Exhibit No. 7 Applicant's revised plat map, received October 9, 2000
- Exhibit No. 8 Land use maps—Kroll Maps 800E, 801W (E3-23-5 and W2-23-5)
- Exhibit No. 9 Assessors Maps—SE ¼ of 3-23-5, and SW ¼ of 2-23-5
- Exhibit No. 10 Letter from Lanny Heno, LUSD to Michael and Claudia Donnelly, containing a discovery request, dated December 20, 2000
- Exhibit No. 11 Letter dated January 10, 2001 from Michael and Claudia Donnelly containing a response to the December 20, 2000 LUSD discovery request.
- Exhibit No. 12 Drawing submitted by the Applicant entitled "Conceptual Open Space Plan," received October 9, 2000
- Exhibit No. 13 Letter dated July 11, 2000 from Joe Miles, P.E., and Jeff O'Neill, DDES, approving SWM Adjustment Request L00V0062, and attached adjustment application and Applicant's cover letter (8 sheets total).
- Exhibit No. 14 Level 1 Downstream Drainage Analysis..., dated August 16, 1999, prepared by the Applicant's engineer, Daniel Balmelli, P.E.
- Exhibit No. 15 Supplemental Level 1 Drainage Analysis..., dated March 14, 2000

Exhibit No. 16	Wildlife Habitat Assessment, dated July 27, 1999, prepared by the Applicant's consultant EA Engineering, Science & Technology.
Exhibit No. 17	Preliminary Wetland/Stream Assessment and Delineation, dated July 27, 1999, prepared by the Applicant's consultant EA Engineering, Science & Technology.
Exhibit No. 18	Traffic Impact Analysis..., dated July 23, 1999, prepared by the Applicant's consultant The Transpo Group
Exhibit No. 19	Additional traffic analysis from The Transpo Group concerning "Stone Ridge—Traffic Safety at SR 900/148 <sup>th</sup> Avenue SE," dated August 30, 2000
Exhibit No. 20	Additional traffic analysis from The Transpo Group concerning "Stone Ridge—Response to WSDOT Comment Letter," dated August 30, 2000
Exhibit No. 21	Nine photographs of portions of Greenes Stream, taken on February 13, 2001 by Grant Smith, Environmental Engineer, King County Road Maintenance Operations Section.
Exhibit No. 22	Letter dated February 7, 2001 from Craig Stone, P.E., Area Administrator South King, Washington State Department of Transportation to Aileen McManus, KCDOT
Exhibit No. 23	Memo from Connie Blumen, King County Parks, facsimile dated March 15, 2001, to Lanny Henoch, Department of Development and Environmental Services
Exhibit No. 24	Notebook of information, entered by Appellant Donnelly
Exhibit No. 24-1	Hand-drawn map
Exhibit No. 24-2	Photographs
Exhibit No. 24-3	Letter to DDES from Donnellys, dated December 4, 1999; response from DDES dated December 10, 1999
Exhibit No. 24-4	Basin Plan for May Valley, dated December 1, 2000, authored by Doug & Oscar Vandelin
Exhibit No. 24-5	Letter dated July 11, 2000 to KB Taylor from Department of Development and Environmental Services
Exhibit No. 24-6	Two letters, both from Mark Bergam, DDES to Mrs. Donnelly, dated September 20 and October 9, 2000, respectively
Exhibit No. 24-7	DDES Information Bulletins 37 and 29
Exhibit No. 24-8	Neighborhood Drainage Assistance Program sheets
Exhibit No. 24-9	Report prepared by Paul Tanaka for Mrs. Donnelly, dated 1995
Exhibit No. 24-10	Various excerpts (5-19 to 10-10, plus 3 spreadsheets) from 1995 Current and Future Conditions Report of May Creek, authored by King County, City of Renton and Citizens Advisory Council.
Exhibit No. 24-11	Water analysis done by AMTEST Laboratories, received January 5, 2001
Exhibit No. 24-12	Photographs of SR 900/148 <sup>th</sup> Ave. SE intersection
Exhibit No. 24-13	<i>PROPOSED</i> —Road Information
Exhibit No. 24-14	WSP accident printout
Exhibit No. 24-15	KCDOT accident data
Exhibit No. 24-16	WSDOT letters to Aileen McManus, KCDOT, dated February 18, 2000, October 17, 2000
Exhibit No. 24-17	Transpo Group memo from Kevin Jones to Curtis Schuster, dated
Exhibit No. 24-18	Seattle Times articles, "More Slipping and Sliding", dated January 6, 2001
Exhibit No. 24-19	Seattle Times article, "Arenas Let More Games Begin", dated January 6, 2001
Exhibit No. 24-20	Transpo Group memo from Kevin Jones to Curtis Schuster, dated August 30, 2000
Exhibit No. 24-21	Short Sudivision No. L94S0102 (Bachman Short Plat)
Exhibit No. 25	May Creek Basin Action Plan, dated December, 1998
Exhibit No. 26	Four color photographs, offered by Appellant Donnelly
Exhibit No. 27	Letter from Craig Stone to Claudia Donnelly, dated February 5, 2001
Exhibit No. 28	Keech letter
Exhibit No. 29	Anderson letter
Exhibit No. 30	Hobbs letter
Exhibit No. 31	Newspaper of traffic statistics, authored by Betty Filley (spec. page 3)
Exhibit No. 32	Letter from Craig Stone, WSDOT, to Aileen McManus, KCDOT, dated October 4, 2000
Exhibit No. 33	Resume of Dan Balmelli, P.E.
Exhibit No. 34	Conceptual Storm Drainage map with colorized location of proposed stormdrainage pond for Stone Ridge
Exhibit No. 35	Revised/Additional Conditions (Nos.8.c, 24 & 29) to staff report (Exhibit No. 2)
Exhibit No. 36	Interlocal Agreement for Coordination with King County for Mitigation of Development Impacts on Intersections, received February 15, 1998
Exhibit No. 37	Resume and qualifications of Chad Armour
Exhibit No. 38	Stone Ridge Plat Biological Evaluation, dated February 1, 2001 prepared for KBS III. LLC by Chad Armour
Exhibit No. 39A	Video tape of Donnelly property and neighboring properties showing water flow
Exhibit No. 39B	Letter accompanying Exhibit No. 39A, to Lanny Henoch from the Donnellys, dated January 10, 2001
Exhibit No. 40A	Seattle Times article "Mud May Fly...", dated February 19, 2001
Exhibit No. 40B	Issaquah Press article, "A Flood of Problems", dated February 28, 2001
Exhibit No. 41	Letter to Examiner Titus from the Donnellys, received March 5, 2001
Exhibit No. 42	Letter of intent from KBS III, LLC, dated September 20, 2000
Exhibit No. 43	Seattle Times weather article "January Weather was a Yawn", dated February 2, 2001
Exhibit No. 44A	Portion of HCM, Special Report 209, updated December, 1997
Exhibit No. 44B	Portion of HCM, Special Report 209, updated October, 1994
Exhibit No. 45	Resume of Kevin Jones

Exhibit No. 46	Transpo Group memorandum from Kevin Jones to Curtis Schuster, KBS III. LLC, dated February 1, 2001.
Exhibit No. 47A	March, 2000 Biota Pacific Red Tailed Hawk Nest Site Management Plan for Stone Ridge
Exhibit No. 47B	June, 2000 Biota Pacific Red Tailed Hawk Nest Site Management Plan for Stone Ridge
Exhibit No. 48	Excerpt, WSDOT Design Manual, April 1998 to November, 1999
Exhibit No. 49	Document, "Other Developments not in KCDOT Files, as of June, 2000 for Stone Ridge", annotated by Kevin Jones.
Exhibit No. 50	February 22, 2001 letter from Kevin Jones and Holly Parsons, Transpo Group to WDOT, Craig Stone and John Collins.
Exhibit No. 51	Transpo Group memorandum from Kevin Jones to Aileen McManus, KCDOT and John Collins, WSDOT, dated February 1, 2001
Exhibit No. 52	Transpo Group memorandum from Kevin Jones to David Halinen, dated March 30, 2001
Exhibit No. 53	Copy of King County Ordinance No. 12616
Exhibit No. 54	March 19, 2001 Neighborhood Drainage Assistance Program—Complaint No. 95-0420
Exhibit No. 55	King County Road Services Division traffic counts for 148 <sup>th</sup> Avenue SE at SR 900, with cover letter attached from Carla Kritsonis.
Exhibit No. 56	WSDOT traffic counts for 148 <sup>th</sup> Avenue SE at SR 900
Exhibit No. 57	PUT 10-3-2, effective date April 26, 1999
Exhibit No. 58	October 30, 2000 letter from Kevin Jones, Transpo Group, to John Collins, WSDOT
Exhibit No. 59	Voluntary Settlement Agreement to Mitigate Impacts to State Facilities, offered by John Collins
Exhibit No. 60	Mr. Henoch's final argument ( <i>entered not as evidence, but to keep track of his notes</i> )

RST:gao

[Plats/L99P3008 RPT